118-233

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~429~~. 219

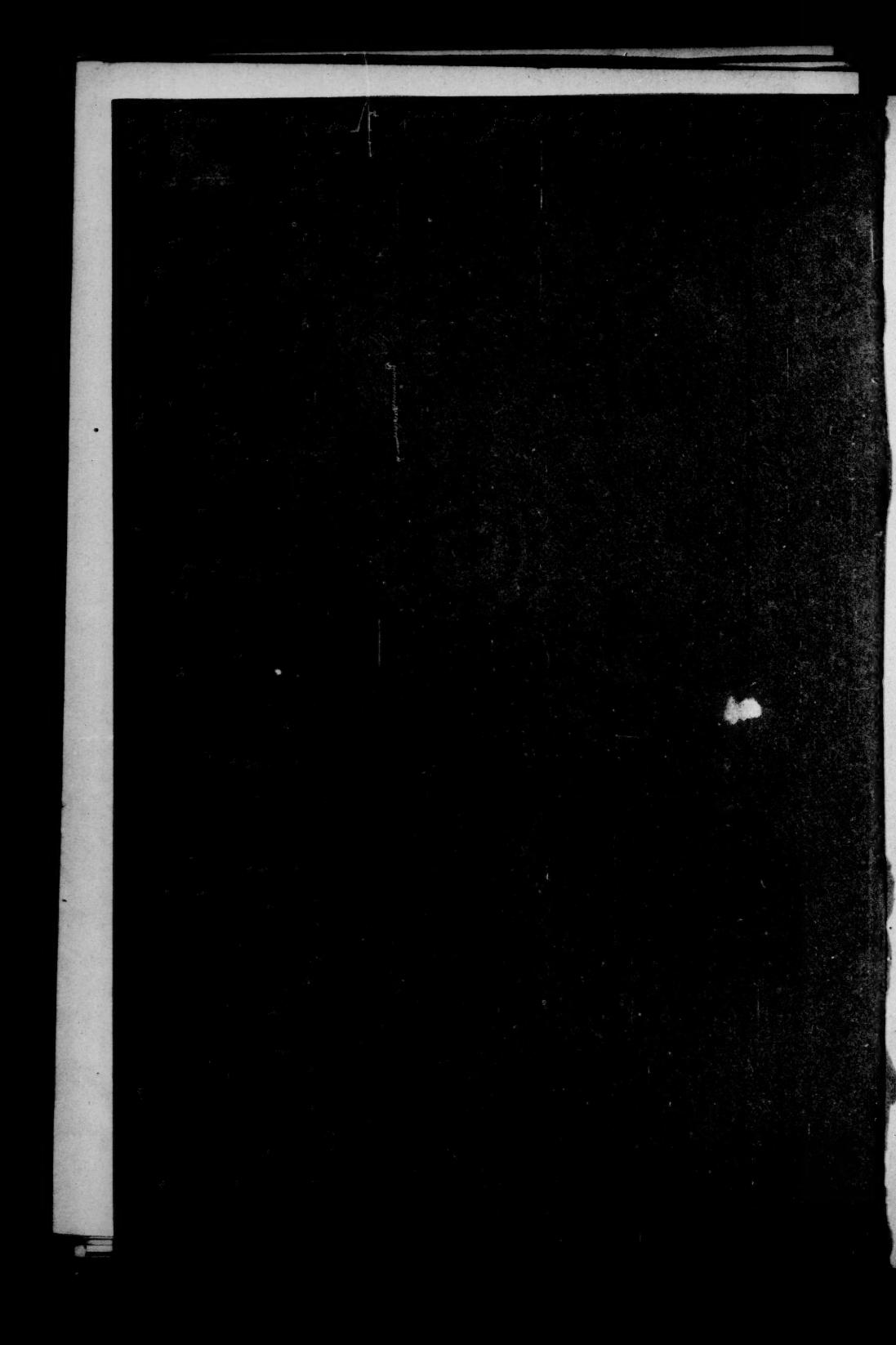
THE UNITED STATES, APPELLANT,

vs.

JOHN HAILEY, ADMINISTRATOR OF A. H. ROBIE, DECEASED.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF MONTANA.

FILED APRIL 19, 1883.



SUPREME COURT OF THE UNITED STATES.

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vs.

JOHN HAILEY, ADMINISTRATOR OF A. H. ROBIE, DECEASED.

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1 *Complaint.*

In the district court of the second judicial district of Idaho Territory, sitting in Ada County for the trial of causes arising under the Constitution and laws of the United States.

THE UNITED STATES, PL'FF,
vs.
ALBERT HUGH ROBIE, DEF'T.

The plaintiff complains of the defendant and for cause of action alleges as follows:

That on the 10th day of July, A. D. 1873, one Virgil Silsbey Eggleston, being at that time a paymaster in the Army of the United States, regularly appointed by the President of the United States, and being by law required to give to the United States a bond with sufficient sureties for the faithful performance of the duties of said office of paymaster, did, together with the defendant and one Alexander Harrison Miller, at the city of Portland, in the county of Multnomah and State of Oregon, make, execute, and deliver to the plaintiff a certain bond or writing obligatory, in the penal sum of forty thousand dollars, in which said bond or writing obligatory the said Virgil Silsbey Eggleston as principal and the

2 defendant and said Alexander Harrison Miller are sureties, a copy of which said bond or writing obligatory is hereunto annexed and marked "A", and forms a part of this complaint, and which said bond was, on the 14th day of A'gust, 1874, approved by the then Secretary of War as appears by the indorsement of said Secretary thereon.

Second. The condition of said bond or writing obligatory is such that if the said Virgil Silsbey Eggleston should well and truly execute and faithfully discharge according to law, and to instructions received by him from proper authority, his duties as paymaster as aforesaid, and he, his heirs, executors, or administrators shall regularly account, when required, for all moneys received by him from time to time as paymaster aforesaid with such person or persons as shall be duly authorized and qualified on the part of the United States for that purpose, and also refund at any time when thereunto required any public moneys remaining in his hands unaccounted for, then the said obligation to be null, void, and of no effect; otherwise to remain and be in full force and virtue.

3 Third. That the said Virgil Silsbey Eggleston did not, and has not, well and truly executed and faithfully discharged, according to law and to instructions received by him from proper authority, his duties as paymaster aforesaid; that the said Virgil Silsbey Eggleston did not and has not, nor have his heirs, executors, or administrators, nor any, nor either of them, regularly accounted, when thereunto required, for all moneys received by him from time to time as paymaster aforesaid, with such person or persons as have been duly authorized and qualified, on the part of the said United States, for that purpose, and have not, nor has any or either of them, refunded, when thereunto required, any public moneys remaining in his the said Virgil Silsbey Eggleston's hands, unaccounted for, as required by law and by the terms and conditions of the said bond or writing obligatory.

Fourth. That between the twentieth day of August, A. D. 1873, and the twelfth day of November, A. D. 1874, both inclusive, the said Virgil Silsbey Eggleston, as such paymaster as aforesaid, did receive of
4 and from the plaintiff, the United States, through its proper officers, the sum of one hundred and fifty-five thousand five hundred and ninety-seven dollars and ninety-three cents, lawful money of the United States, to be by him laid out, expended, and accounted for as such paymaster as aforesaid, according to law and the instructions received by him from the proper authority of the said United States.

Fifth. That the said Virgil Silsbey Eggleston did not and has not paid, laid out, expended, and accounted for said sum of one hundred and fifty-five thousand five hundred and ninety-seven dollars and ninety-three cents, so as aforesaid received by him as such paymaster as aforesaid according to law and instructions, received by him from proper authority, but that a large sum thereof, to wit, the sum of twelve thousand four hundred and thirteen dollars and forty-five cents, ($12,413.45) lawful money of the United States, was by the said Virgil Silsbey Eggleston, on the 24th day of November, converted to his own use, contrary to law and the terms and conditions of said bond or writing obligatory.

5 Sixth. That on the 15th day of December, 1874, there was remaining in the hands of the said Virgil Silsbey Eggleston, as paymaster as aforesaid, the sum of twelve thousand four hundred and thirteen dollars and forty-five cents ($12,413.45), the same being public money of the United States which had come into the hands of the said Virgil Silsbey Eggleston as such paymaster as aforesaid, and then and there remaining in his hands unaccounted for, but the said Virgil Silsbey Eggleston, his heirs, executors, or administrators did not, nor have not, nor has any or either of them, although often requested so to do, refunded the same, nor any part thereof, to the said plaintiff, the United States, but so to do hath hitherto wholly neglected and refused, and still do neglect and refuse, so to do.

Wherefore and by reason of the premises the said defendant became, and was, and still is indebted to the plaintiff in the sum of twelve thousand four hundred and thirteen dollars and forty-five cents, with interest thereon at the rate of six per cent. per annum.

6 Wherefore plaintiff demands judgment against the defendant for the sum of twelve thousand four hundred and thirteen dollars and forty-five cents ($12,413.45), with interest thereon at the rate of six per cent. per annum, from November 24th, 1874, and for costs.

JO. W. HUSTON,
U. S. Attorney for Idaho Territory.

7 A.

Know all men by these presents that we, Virgil Silsbey Eggleston, of Portland, Oregon, as principal, and Albert Hugh Robie, of Boise City, Idaho Territory, and Alexander Harrison Miller, of Linkville, Jackson County, Oregon, are holden and stand firmly bound and obliged unto the United States of North America, or their certain attorney, in the penal sum of forty thousand dollars current money of the United States, well and truly to be paid into their treasury, for which payment faithfully to

be made and done, we, the said Virgil Silsbey Eggleston, Albert Hugh Robie, and Alexander Harrison Miller, do bind ourselves, and each of us, our heirs, executors, and administrators, and each and every of them, for, and in the whole, jointly, severally, and firmly by these presents. Signed with our hands and sealed with our seals this tenth day of July, in the year one thousand eight hundred and seventy-three.

The condition, however, of this obligation is such that whereas the above bounden Virgil Silsbey Eggleston has been appointed a paymaster in the Army of the United States aforesaid: Now, if the said Virgil Silsbey Eggleston shall well and truly execute and faithfully discharge,

(On the margin:) I have examined this bond and find it to be in legal form and properly executed.

E. B. CUSTIER,
Acting Comptroller.

2ND COMPT'S OFFICE, *Aug. 2nd*, 1873.

Approved.

W. W. BELKNAP,
Sec'y of War.

AUG. 14, 1873.

8 according to law and to instructions received by him from proper authority, his duties as paymaster aforesaid; and he, his heirs, executors, and administrators shall regularly account, when thereunto required, for all moneys received by him from time to time as paymaster aforesaid, with such person or persons as shall be duly authorized and qualified on the part of the said United States for that purpose, and also refund at any time when thereunto required any public moneys remaining in his hands unaccounted for, then this obligation shall be null, void, and of no effect; otherwise, remain and be in full force and virtue.

Done at Portland, State of Oregon, the day and year before written.

VIRGIL SILSBEY EGGLESTON. [SEAL.]
ALBERT HUGH ROBIE. [SEAL.]
ALEXANDER HARRISON MILLER. [SEAL.]

Signed, sealed, and delivered in presence of—
Witness to the signature of Virgil S. Eggleston:
W. F. WILLIAMS.
to Albert H. Robie:
ED. WILCOX.
Witnesses to the signature of Alexander Harrison Miller:
RALPH WILCOX,
ED. WILCOX.

9 I, Virgil Silsbey Eggleston, do solemnly swear that I will diligently and faithfully execute and perform the duties of paymaster in the Army of the United States of North America according to the best skill and ability of which I am possessed. So help me God.

VIRGIL SILSBEY EGGLESTON.

Sworn and subscribed to at Portland, in the State of Oregon, this 10th day of July, 1873, before me.

RALPH WILCOX,
Clerk U. S. District Court, Oregon.

COUNTY OF MULTNOMAH,
State of Oregon, ss:

On this third day of July, 1873, personally appeared before me, a clerk of the U. S. district court for the county aforesaid, Albert Hugh Robie, a resident of Boise City, Idaho T'y, who made oath that he is worth thirty thousand dollars over and above all his debts and liabilities.

ALBERT HUGH ROBIE.

Sworn and subscribed before me on the day and date aforesaid.

RALPH WILCOX,
Clerk U. S. District Court, Oregon.

10 COUNTY OF MULTNOMAH,
State of Oregon, to wit:

On this tenth day of July , personally appeared before me, a clerk of the U. S. district court for the county aforesaid, Alexander Harrison Miller, a resident of Linkville, Oregon, who made oath that he is worth ten thousand dollars over and above all his debts and liabilities.

ALEXANDER HARRISON MILLER.

Sworn and subscribed to before me.

RALPH WILCOX,
Clerk U. S. District Court, Oregon.

DISTRICT OF OREGON.

I hereby certify that the persons named in and who signed the within bond are sufficient for the penalty thereof.

Dated July 10th, 1873.

MATHEW P. DEADY,
U. S. District Judge, Oregon.

11 DISTRICT OF OREGON, *ss:*

I, Ralph Wilcox, clerk of the district court of the United States for the district of Oregon, do hereby certify that Mathew P. Deady, whose name appears to the foregoing certificate is, and was at the date thereof, judge of said court, duly commissioned and qualified as such, and that his said signature is genuine.

Witness my hand and the seal of said court at Portland this 10th day of July, 1873.

{ U. S. DISTRICT COURT OF OREGON SEAL. }

RALPH WILCOX,
Clerk.

(Endorsed:) District court, 2nd district Idaho T'y. The United States, pl'ff, vs. Albert H. Robie, deft. Complaint filed Jan'y 24th, 1877. A. L. Richardson, clerk. Jo. W. Huston, U. S. attorney, I. T.

12 *Summons.*

In the district court for the Territory of Idaho, 2nd judicial district, sitting in Ada County for the trial of causes arising under the Constitution & laws of the United States.

TERRITORY OF IDAHO,
County of Ada, ss:

THE UNITED STATES, PLAINTIFF,
vs.
ALBERT H. ROBIE, DEFENDANT.

To Albert H. Robie, in the name of the President of the United States:

You are hereby notified that there is now on file in the office of the clerk of the district court of the 2nd judicial district of said Territory, in Ada County, the complaint of the United States claiming of you as one of the sureties upon the official bond of Virgil Silsbey Eggleston, late paymaster in the Army of the United States, the sum of twelve thousand four hundred and thirteen & $\frac{45}{100}$ dollars, by reason of a default in the condition of said bond, as more fully appears from the complaint on file herein, with a certified copy of which you are herewith served.

And that unless you appear and answer to said complaint within ten days after the service hereof, if served within Ada County, and
13 within twenty days, if served out of said county but within said judicial district, and within thirty days, if served out of said district (exclusive of the day of service), judgment will be taken against you by default.

In testimony whereof I, A. L. Richardson clerk of said district court, have hereunto set my hand and affixed the seal of said court at Boise City, I. T., this 24th day of January A. D. 1877.

[SEAL.] A. L. RICHARDSON,
Clerk of the District Court.

JO. W. HUSTON,
U. S. Att'y for Idaho T'y:

I hereby certify that I served the within summons on Albert H. Robie on the 3rd day of February, 1877, at Boise City, Ada County, I. T., by exhibiting the original to him (the defendant) and delivering to him a true copy thereof, and by delivering a certified copy of the complaint herein to the defendant, Albert H. Robie, at the same time and place.

JOSEPH PINKHAM,
U. S. Marshal for Idaho Ty.

FEBRUARY 7th, 1877.

14 (Endorsed:) U. S. district court 2nd judicial district. The United States vs. A. H. Robie. Summons. Filed February 7th, 1877. A. L. Richardson, clerk.

15 *Answer.*

In the district court of the second judicial district of Idaho Territory, sitting in Ada County, for the trial of causes arising under the Constitution and laws of the United States.

THE UNITED STATES, PLAINTIFF,
against
ALBERT HUGH ROBIE, DEFENDANT.

Said defendant, answering the complaint of said plaintiff herein filed, respectfully shows to the court:

First. For a first defence this defendant denies each and every allegation in plaintiff's complaint contained.

Second. For a second defence this defendant avers that the said supposed writing, obligatory or official bond, in said complaint described, is not his deed.

Third. For a third defence this defendant denies that said Virgil Silsbey Eggleston was, on the tenth day of July, A. D. 1873, or at any other time, required by law to give to the United States a bond for the faithful performance of the duties of the office of paymaster in the Army
16 of the United States; and denies that on said day, or at any other time, said Eggleston did, together with this defendent and said Alexander Harrison Miller, at the city of Portland, in the county of Multnomah, and State of Oregon, or elsewhere, execute or deliver to the plaintiff a certain or any bond or writing obligatory in the penal sum of forty thousand dollars, in which said Eggleston is principal and this defendant and said Miller are sureties.

Denies that said Eggleston did not or has not well and truly executed and faithfully discharged according to law, and according to the instructions received by him from proper authority, his duties as such paymaster.

Denies that said Eggleston did not or has not regularly accounted when thereunto requested, for all moneys received by him as such paymaster.

Denies that said Eggleston has not refunded, when thereunto requested, any and all public moneys remaining in his hands.

Denies that between the said twentieth day of August, 1873, and the twelfth day of Nov., 1874, both inclusive, or on or between any other or any day or days the said Eggleston did receive from the United
17 States the sum of one hundred and fifty-five thousand five hundred and ninety-seven dollars and ninety-three cents, or any other or greater sum than one hundred and forty-three thousand one hundred and eighty-four dollars and forty-eight cents.

Denies that said Eggleston, did not or has not paid, laid out, expended, and accounted for all public moneys received by him as such paymaster.

Denies that said Eggleston on the 24th day of November, 1874, or on any other or any day or days, converted to his own use the sum of twelve thousand four hundred and thirteen dollars and forty-five cents, or any other or any sum or amount whatever received by him as such paymaster.

Denies that on said 15th day of December, 1874, or at any other time there was remaining in the hands of the said Eggleston, as such paymaster, the sum of twelve thousand four hundred and thirteen dollars and forty-

five cents, or any other or any sum or amount whatever, of public moneys of the United States unaccounted for, or which the said Eggleston refused or neglected to refund to the United States; and denies that said
18 Eggleston was often or at any time requested to refund the same or any part thereof.

And denies that by reason of the premises alleged in plaintiff's complaint, or otherwise, this defendant became, or was, or still is, or was at the commencement of this action, indebted to the plaintiff in the sum of twelve thousand four hundred and thirteen dollars and forty-five cents, or in any other, or in any sum or amount whatever.

But defendant avers that said Eggleston did, and has at all times well and truly executed and faithfully discharged, according to law and to instructions received by him from proper authority, his duties as paymaster aforesaid, and did and has regularly accounted, when thereunto required, for all moneys received by him from time to time as paymaster as aforesaid, with such person or persons as have been duly authorized or qualified on the part of the United States for that purpose; and did and has refunded at any and all times, when thereunto required, any and all public moneys remaining in his hands unaccounted for.

19 Fourth. For a fourth defence this defendant avers that the said Eggleston did, and has at all times subsequent to the execution of the bond or writing obligatory mentioned in and attached to the complaint herein, to wit, the tenth day of July, A. D. 1873, faithfully account' for all public moneys and property received him.

Fifth. For a fifth defence this defendant avers that the said Eggleston did, and has at all times subsequent to the acceptance of said bond or writing obligatory and the approval of the sureties thereto by the Secretary of War of the United States, to wit, the fourteenth day of August, A. D. 1873, faithfully accounted for all moneys and public property received by him as such paymaster.

Sixth. For a sixth defence this defendant avers that it is, and was at the time of the execution of the bond or writing obligatory mentioned in and attached to the complaint herein, provided by law that all paymasters in the Army of the United States should execute a bond to the United States conditioned "faithfully to account for all public moneys
20 and property which they may receive," and no other or further condition is or was authorized by law, and no officer or agent of the United States is or was authorized or empowered to require that said Eggleston or his sureties should execute or deliver to the United States any bond or writing obligatory with condition other or different than as provided by law. That on said tenth day of July, A. D. 1873, and for a long time prior thereto, to wit, sixty days, said Eggleston was and had been a paymaster in the Army of the United States, and prior to said day and while said Eggleston was paymaster, the said Secretary of War of the United States for the time being prepared or caused to be prepared and transmitted to said Eggleston the said bond or writing obligatory mentioned in and attached to the complaint herein, and did require and demand of him, the said Eggleston, that the same with the condition should be executed by him with sufficient sureties before he should be permitted to remain in the said office of paymaster or to receive the pay and emoluments attached to the said office.

That the condition of said bond or writing obligatory, as so pre-
21 pared and required of said Eggleston as aforesaid, is varient and wholly different from the condition authorized or required by law, and varies and enlarges the duties and responsibilities of said Eggleston and his sureties thereto in that:

1. Said bond is conditioned that said Eggleston shall "well and truly execute and faithfully discharge, according to law, and to instructions received by him from proper authority, his duties as paymaster aforesaid," which said duties as paymaster defendant avers embraced many other acts, matters, and things besides the duty of said Eggleston "faithfully to account for all public moneys and property which he might receive," for which alone his sureties could be bound.

2. Said bond is further conditioned that said Eggleston shall regularly account, when thereunto required, for all money's received by him from time to time as paymaster aforesaid, which moneys this defendant avers embraced large sums of money not "public moneys or property," for which alone his sureties could be bound.

22 3. Said bond is further conditioned that said Eggleston shall "refund at any time, when thereunto required, any public moneys remaining in his hands unaccounted for," which condition defendant avers embraced the repayment to the United States of any public moneys at any time unaccounted for—and not the mere accounting for such moneys—for which alone the sureties of said Eggleston could be bound. And the said bond or writing obligatory, so conditioned as aforesaid, was under color and pretence of law and under color of office required and extorted from the said Eggleston and from this defendant as one of his sureties, against the form, force, and effect of the said statute in such case made and provided, by the then Secretary of War.

Seventh. For a seventh defence this defendant avers that said bond or writing obligatory mentioned in and attached to the complaint herein is dated and was executed by said Eggleston and said Alexander Harrison Miller on the tenth day of July, 1873.

23 That prior thereto and on the third day of July, 1873, said Eggleston presented a printed blank form of said bond without penalty or date or signature thereto, and without the name of any surety therein, to this defendant and requested defendant to become a surety thereto, and for the purpose of inducing defendant to become such surety said Eggleston then and there represented to defendant that he would procure one John C. Ainsworth, of Portland, in the State of Oregon, to execute said bond and to become a cosurety and jointly bound with defendant in said bond, and it was then and there agreed between said Eggleston and this defendant that said Eggleston should not deliver said bond, and that the same should not become the bond or a binding obligation of this defendant, until it should be so executed by said Ainsworth.

That in consequence of said representations and agreement, and upon the express condition that said paper should not be delivered to the United States until executed by said Ainsworth, this defendant, on said third day of July, 1873, prior to the date of said bond, signed said blank
24 form of bond and the affidavit thereto attached dated on said day, which but for said representations and agreement this defendant never would have done.

That said Eggleston neglected and failed to procure said bond to be executed by said Ainsworth on said third day of July, or at any other time, but afterwards and on said tenth day of July, without the authority, knowledge, or consent of this defendant, said Eggleston filled the blanks in said form of bond and executed the same and caused the same to be executed by said Miller, and in violation of his agreement with defendant transmitted the same to the War Department of the United States with the signature of this defendant thereto attached, and without the signature or execution of said Ainsworth.

Eighth. For an eighth defense this defendant avers:

That on the sixth day of October, 1875, said Miller died intestate, and on the seventh day of December, 1875, one Nurse was duly appointed administrator of his estate.

That heretofore, to wit, at the March term, 1876, of the circuit
25 court of the United States for the district of Oregon the plaintiff herein, as plaintiff impleaded this defendant and said Eggleston and said Nurse, as such administrator of said Miller, deceased, as defendants in said circuit court in a certain cause for and in respect of the same identical cause of action as is herein by said plaintiff set forth and alleged against this defendant, and such proceedings were thereupon had in the same cause that afterwards by the consideration and judgment of said circuit court, final judgment was entered in favor of the plaintiff and against the said administrator for the identical sum herein demanded by said plaintiff, of which judgment plaintiff has received payment and satisfaction in full, as by the record and proceedings thereof still remaining in said circuit court more fully and at large appears.

Wherefore defendant demands judgment that he be hence dismissed without day with his costs of action.

RICHARD Z. JOHNSON,
Attorney for Defendant.

26 (Endorsed:) In district court, second judicial dist., Idaho Territory, Ada County. United States v. Albert H. Robie. Answer. Filed January 31st, 1878. A. L. Richardson, clerk. Richard Z. Johnson, att'y for def'd.

27 *Notice of motion to strike out 6th and demurrer to 7th. sub of answer.*

In the district court of the second judicial district of Idaho Territory, sitting in Ada County, for the trial of causes arising under the Constitution and laws of the United States.

Notice of motion to strike out a part of answer & demurrer.

THE UNITED STATES, PLAINTIFF,
against
ALBERT HUGH ROBIE, DEFENDANT.

Take notice that on the bond and the pleading in this case the undersigned will move the court at the next general term of said court to be held at the city of Boise, in Ada County, in said district, on the 11th day

November, A. D. 1878, at the opening of said court, or as soon thereafter as counsel can be heard, to strike out the sixth defence contained in the answer in this action as sham.

Please to take notice also that plaintiff demurs to the seventh defence contained in the answer of the defendant herein for insufficiency in not stating facts sufficient to constitute a defence to said action.

NORMAN BUCK,
U. S. Att'y, for the Plaintiff.

To RICHARD Z. JOHNSON,
Attorney for the Defendant, Silver City, Idaho.

28 (Endorsed:) U. S. dist. court, 2nd judicial dist., Ada Co., Id'o. The United States vs. Albert Hugh Robie. Notice of motion to strike out part of the answer. Demurrer. Filed Nov. 4th, 1878. A. L. Richardson, clerk. Norman Buck, U. S. att'y, att'y for the plaintiff.

29 *Order substituting John Hailey, ad'm., for A. H. Robie, a def't.* (*Copy of record.*)

TERRITORY OF IDAHO,
County of Ada, ss:

WEDNESDAY, *November* 13*th*, 1878.

Third judicial day of the district court. Court me' pursuant to adjournment, when the following proceedings were had, to wit:

THE UNITED STATES
vs.
ALBERT H. ROBIE.

The U. S. attorney, Norman Buck, esq., and R. Z. Johnson, esq., attorney for the defendant in this cause, appeared this day in open court and suggested the death of the def't, and moved the court that the administrator of the estate of said defendant be substituted. It is therefore ordered that the above-entitled action be continued in the name of John Hailey, administrator of the estate of A. H. Robie, deceased, as defendant.

(Signed) H. E. PRICKETT,
Presiding Judge.

30 *Order of the court sustaining demurrer to 7th, and overruling motion to strike out 6th sub. of answer.* (*Copy of record.*)

MONDAY, *Nov.* 21*st, A. D.* 1878.

TERRITORY OF IDAHO,
County of Ada, ss:

Tenth judicial day of the district court; court met pursuant to adjournment, when the following proceedings were had, to wit:

THE UNITED STATES
vs.
JOHN HAILEY, ADMINISTRATOR OF THE ESTATE of A. H. Robie, deceased.

Now on this day was announced the decision of the court on the demurrer to the 7th subdivision of defendant's answer and motion to strike out 6th subdivision of the same.

Ordered, That the demurrer be, and the same is hereby, sustained.

To which ruling of the court the defendant, by his counsel, then and there excepted in due form of law.

Ordered, That said motion to strike out be, and the same is hereby, overruled.

To which ruling of the court the plaintiff, by his counsel, then and there excepted in due form of law.

(Signed) H. E. PRICKETT,
Presiding Judge.

31 *Demurrer to 6th defence in the answer.*

In the district court, 2nd judicial district, Ada County, Territory of Idaho.

THE UNITED STATES, PLAINTIFF,
vs.
JOHN HAILEY, ADMINISTRATOR OF ALBERT Hugh Robie, deceased, defendant.

To the said defendant:

Please take notice that the plaintiff demurs to the sixth defence set up in the answer herein for insufficiency in not stating facts sufficient to constitute a defence.

Nov. 23rd, 1878.

NORMAN BUCK,
U. S. Att'y for Idaho Territory, Att'y for Plaintiff.

To R. Z. JOHNSON,
Att'y for Defendant.

32 (Endorsed:) Territory of Idaho, dist. court 3d judicial district, Ada County. The United States vs. John Hailey, as administrator of estate of Albert Hugh Robie, deceased, defendant. Demurrer to 6th defence in the answer. Filed Nov. 23rd, 1878. A. L. Richardson, clerk. Norman Buck, U. S. Att'y for Idaho Territory.

33 *Order of court sustaining demurrer to 6th sub. of answer. (Copy of record.)*

TERRITORY OF IDAHO,
County of Ada, ss:

SATURDAY, *November 23rd, A. D.* 1878.

Twelfth judicial day of the district court; court met pursuant to adjournment, when the following proceedings were had, to wit:

THE UNITED STATES
vs.
JOHN HAILEY, ADMINISTRATOR OF THE ESTATE of A. H. Robie, deceased.

On this day the plaintiff's demurrer to the sixth subdivision of def't's answer was submitted to the court without argument; and afterwards, to

wit, on the same day the court announced its decision sustaining said demurrer; to which ruling of the court the defendant, by his counsel, then and there excepted in due form of law.

(Signed) H. E. PRICKETT,
Presiding Judge.

34 *Def't's bill of exceptions.*

UNITED STATES OF AMERICA,
District of Idaho:

In the district court of the second judicial district of said Territory, sitting in Ada County, for the trial of causes arising under the Constitution and laws of the United States.

UNITED STATES, PLAINTIFF,
ag'st
JOHN HAILEY, ADMINISTRATOR OF THE ESTATE of A. H. Robie, deceased, defendant.

Be it remembered that at the November term, 1878, of said court, and on the eighteenth day of November, 1878, this cause coming on for hearing on the demurrer of said plaintiff to the seventh defence contained in the answer of defendant in this action filed, which demurrer, after the title of the court and of the action, is in the words and figures following, to wit:

"Please to take notice also that the plaintiff demurs to the seventh defence contained in the answer of the defendant herein, for insufficiency
35 in not stating facts sufficient to constitute a defence to said action."

Which said defence so demurred to is in the words and figures following, to wit:

"Seventh. For a seventh defence, this defendant avers that said bond or writing obligatory mentioned in and attached to the complaint herein, is dated and was executed by said Eggleston and said Alexander Harrison Miller on the tenth day of July, 1873.

"That prior thereto, and on the third day of July, 1873, said Eggleston presented a printed blank form of said bond, without penalty or date or signature thereto, and without the name of any surety therein, to this defendant, and requested defendant to become a surety thereto, and for the purpose of inducing defendant to become such surety, said Eggleston then and there represented to defendant that he would procure one John C. Ainsworth, of Portland, in the State of Oregon, to execute said bond and to become cosurety and jointly bound with defendant in said bond, and it was then and there agreed between said Eggleston and this de-
36 fendant that said Eggleston should not deliver said bond, and that the same should not become the bond or a binding obligation of this defendant until it should be so executed by said Ainsworth."

And after argument of said demurrer by the respective counsel of plaintiff and defendant, the court took said demurrer under advisement; and afterwards, and on the twenty-first day of November, A. D. 1878, the court announced its decision and sustained said demurrer to said defence; to which ruling the defendant, by his counsel, at the time in open court

excepted, and asked the court to sign and seal this bill of exceptions and make the same a part of the record in this cause, which is done accordingly.

(Signed) H. E. PRICKETT. [SEAL.]
District Judge.

37 (Endorsed:) In district court, 2nd jud'l dist., Ada County. United States, ag'st John Hailey, administrator. Def'd't's bill of exceptions. Filed Nov. 23rd, 1878. A. L. Richardson, clerk. Johnson for def'd't.

Def'd't's bill of exceptions.

38 UNITED STATES OF AMERICA,
District of Idaho Territory:

In the district court of the second judicial district of said Territory, sitting in Ada County, for the trial of causes arising under the Constitution and laws of the United States.

UNITED STATES, PLAINTIFF,
ag'st
JOHN HAILEY, ADMINISTRATOR OF THE ESTATE of A. H. Robie, deceased, defendant.

Be it remembered that at the November term, 1878, of said court, and on the twenty-third day of November, 1878, this cause coming on for hearing on the demurrer of said plaintiff to the sixth defence contained in the answer of defendant in this action filed, which demurrer, after the title of the court and of the action, is in the words and figures following, to wit:

"To the said defendant:

"Please take notice that the plaintiff demurs to the sixth defence set up in the answer herein for insufficiency in not stating facts sufficient to constitute a defence."

39 Which said defence so demurred to, is in the words and figures following, to wit:

"Sixth. For a sixth defence this defendant avers that it is, and was at the time of the execution of the bond or writing obligatory mentioned in and attached to the complaint herein, provided by law that all paymasters in the Army of the United States should execute a bond to the United States conditioned 'faithfully to account for all public moneys and property which they may receive,' and no other or further condition is or was authorized by law, and no officer or agent of the United States is or was authorized or empowered to require that said Eggleston or his sureties should execute or deliver to the United States any bond or writing obligatory with condition other or different than as so provided by law.

"That on said tenth day of July, A. D. 1873, and for a long time prior thereto, to wit, sixty days, said Eggleston was and had been a paymaster in the Army of the United States, and prior to said day, and while

said Eggleston was such paymaster the said Secretary of War of the United States for the time being prepared, or caused to be
40 prepared and transmitted to said Eggleston, the said bond or writing obligatory mentioned in and attached to the complaint herein, and did require and demand of him, the said Eggleston, that the same, with the condition, should be executed by him with sufficient sureties before he should be permitted to remain in the said office of paymaster or to receive the pay or emoluments attached to the said office.

"That the condition of the said bond or writing obligatory, as so prepared and required of said Eggleston, as aforesaid, is variant and wholly different from the condition authorized or required by law, and varies and enlarges the duties and responsibilities of said Eggleston and his sureties thereto in that—

1. Said bond is conditioned that said Eggleston 'shall well and truly execute and faithfully discharge, according to law, and to instructions received by him from proper authority, his duties as paymaster aforesaid.' Which said duties as paymaster defendant avers embraced many other acts, matters, and things besides the duty of said Eggleston 'faithfully to account for all public moneys or property which he might receive,' for which alone his sureties could be bound.

41 "2. Said bond is further conditioned that said Eggleston shall regularly account when thereunto required for all monies received by him from time to time as paymaster aforesaid, which moneys this defendant avers embraced large sums of money not 'public moneys or property,' for which alone his sureties could be bound.

"3. Said bond is further conditioned that said Eggleston should 'refund at any time when thereunto required any public moneys remaining in his hands unaccounted for,' which condition defendant avers embraced the repayment to the United States of any public moneys at any time unaccounted for and not the mere accounting for such moneys for which alone the sureties of said Eggleston could be bound.

"And the said bond or writing obligatory, so conditioned as aforesaid, was under color and pretence of law and under color of office required and extorted from the said Eggleston and from this defendant, as one of his sureties, against the form, force, and effect of said statute in such case made and provided, by the then Secretary of War."

42 Said demurrer was submitted to the court without argument, and afterwards, to wit, on the said twenty-third day of November, A. D. 1878, the court announced its decision and sustained said demurrer to said defence; to which ruling the said defendant, by his counsel, at the time, in open court excepted, and asked the court to sign and seal this bill of exceptions and make the same a part of the record in this cause, which is done accordingly.

(Signed) H. E. PRICKETT, [SEAL.]
District Judge.

(Endorsed:) In the district court, 2nd judicial dist., Ada Co. United States ag'st John Hailey, administrator. Def't's bill of exceptions. Filed Nov. 25th, 1878. A. L. Richardson, clerk. R. Z. Johnson, att'y for def't.

43 *Motion for verdict for def't.*

In the district court of the second judicial district of Idaho Territory, in and for Ada County, sitting for the trial of causes arising under the Constitution and laws of the United States, December term, 1881.

Present, Hon. H. E. Prickett, judge.

UNITED STATES, PLAINTIFF,
v.
JOHN HAILEY, ADMINISTRATOR OF THE ESTATE of A. H. Robie, deceased, defendant.

Now, on this tenth day of December, 1881, being a day of said term, this action being on trial before the court and a jury, and the plaintiff having completed its evidence and rested, the defendant moved the court to direct the jury to find a verdict for the defendant, on the ground that the evidence does not show that the claim in suit has been presented to the administrator of said estate of A. H. Robie, deceased, for allowance or rejection, as required by law.

HUSTON AND GRAY AND
RICHARD Z. JOHNSON,
Attorneys for Defendant.

44 (Endorsed:) District court, Ada County. United States vs. John Hailey, administrator. Motion for virdict for defendant. Filed Dec. 10th, 1881. A. L. Richardson, clerk, by B. S. Prickett, deputy clerk.

45 *Virdect.*

In the district court of the 2nd judicial district of Idaho Territory, in and for Ada County.

THE UNITED STATES
vs.
JOHN HAILEY, ADMINISTRATOR OF THE ESTATE of A. H. Robie, deceased.

The jury, under the instructions of the court in the above-entitled case, find a virdict for the defendant.

M. B. GWINN,
Foreman.

(Endorsed:) United States vs. John Hailey, adm. est. of A. H. Robie. Virdict. Filed Dec. 10th, 1881. A. L. Richardson, clerk, by B. S. Prickett, deputy clerk.

46 *Judgment.* (*Copy of record.*)

In the district court, second judicial district, of Idaho Territory, in and for Ada County. December 10th, 1881.

THE UNITED STATES
vs.
JOHN HAILEY, ADMINISTRATOR OF THE ESTATE of A. H. Robie, deceased.

This cause adjourned on yesterday for further hearing was this day resumed; jury called and found to be present, the respective attorneys of record being in court.

The plaintiff, by its attorney, Wallace R. White, esq., here rests; whereupon the defendant, by his counsel, moved the court to instruct the jury to find a virdict for the defendant, on the ground that the evidence does not show that the claim in suit has been presented to the administrator of the said estate of A. H. Robie, deceased, for allowance or rejection, as required by law, which motion, after argument, and upon consideration, was by the court sustained, and the judge so instructed, and the jury returned the following virdict, to wit:

47 THE UNITED STATES
vs.
JOHN HAILEY, ADMINISTRATOR OF THE ESTATE of A. H. Robie, deceased.

We, the jury, under instructions of the court in the above-entitled case, find a virdict for the defendant.

M. B. GWINN,
Foreman.

Which virdict was recorded by the clerk and read to the jury, who confirmed the same.

It is therefore ordered and adjudged that said cause be and the same is hereby dismissed.

H. E. PRICKETT,
Presiding Judge.

Judgment rendered December 10th, 1881.

48 *Clerk's certificate to judgment roll.*

In the district court of the second judicial district of the Territory of Idaho, in and for the county of Ada.

THE UNITED STATES, PLAINTIFF,
vs.
JOHN HAILEY, ADM'R, &C., DEFENDANT.

I, the undersigned, clerk of the district court of the second judicial district of said Territory in and for said county, do hereby certify the foregoing to be a true copy of the judgment entered in the above-entitled

action, and recorded in judgment book "A" of said court, at page 24. And I further certify that the foregoing papers hereto annexed constitute the judgment roll in said action.

Witness my hand and the seal of the district court this 10th day of December, A. D. 1881.

[SEAL.] A. L. RICHARDSON, *Clerk.*

49 *Order of court extending time for preparing and serving bill of exceptions.* (*Copy of record.*)

TERRITORY OF IDAHO,
County of Ada:

MONDAY, *December* 12, 1881.

Seventh judicial day of the district court. Court met pursuant to adment.

Present, the same as on Saturday, the 10th inst.

When the following proceedings were had, to wit:

THE UNITED STATES
vs.
JOHN HAILEY, ADM'R OF THE ESTATE OF A. H. Robie, deceased.

On motion of Wallace R. White, esq., U. S. att'y, ordered, that the time for preparing and serving draft of bill of exceptions herein be, and is hereby, extended to thirty days from this date.

(Signed)

H. E. PRICKETT,
Presiding Judge.

50 *Exceptions.*

In the district court of the second judicial district of Idaho Territory, sitting for the trial of causes arising under the Constitution and laws of the United States. December term, 1881. Ada County.

THE UNITED STATES, PLAINTIFF,
vs.
JOHN HAILEY, ADM'R ON ESTATE OF A. H. Robie, deceased, defendant.

The complaint in above-entitled action was filed in the office of the clerk of second judicial district aforesaid Jan. 24th, 1877, made against Alfred Hugh Robie in his life-time, as one of the bondsmen on bond of Virgil Silsbey Eggleston, alleged defaulting paymaster in the Army of U. S. A summons was duly issued from the office of said clerk founded on said complaint, and was duly served on the defendant A. H. Robie during his life-time. Answer was made to said complaint by Richard Z. Johnson, att'y for defendant Robie, and filed in the office of said clerk Jan. 31st,

51 1878. Nov. 13, 1878, at the suggestion and motion of Norman Buck, U. S. att'y, and Richard Z. Johnson, att'y for def't Robie, John Hailey, administrator on the estate of said A. H. Robie, deceased, was substituted for the said Robie, who previous to said Nov. 13, 1878, and after filing said answer had died. On the twentieth day of Nov., 1878, a demurrer to the seventh subdivision of def't's answer was

made in s'd court, and on the twenty-first day of Nov., 1878, said demurrer was by the said court sustained.

On the twenty-third day of Nov., 1878, a demurrer to the sixth subdivision was made by the U. S. att'y and sustained.

On the tenth day of December, A. D. 1881, being a day of said Dec. term, 1881, at the district court of the second judicial district of Idaho Territory aforesaid, sitting for the trial of causes arising under the Constitution and laws of the U. S. in Ada County and Boise City, came the parties aforesaid, the United States, by their att'y, W. R. White, U. S. att'y within and for Idaho Territory, and John Hailey, administrator on said estate of A. H. Robie, deceased, def't, being personally present with his counsel, Messrs. Huston & Gray and Richard Z. Johnson, before the said district court of the said second judicial district of Idaho Ter-
52 tory, sitting for the trial of causes arising under the Constitution and laws of the U. S., and the jurors duly summoned to try the said issue being called also came, who, to speak the truth of the matter aforesaid, were duly chosen, tried, and sworn.

And upon the trial of that issue the counsel for the plaintiff, in order to maintain the issue on the part of the plaintiff, gave in evidence the original bond signed by Virgil Silsbey Eggleston, Albert Hugh Robie, and Alexander Harrison Miller in favor of the U. S., dated July 10th, 1873, and the transcript of the accounts of said Eggleston, alleged defaulting paymaster, from the Treasury Department, and also copy of accounts current of said Eggleston from Aug., 1873, until the dismissal of said Eggleston by the U. S. authorities, and certain other receipts, but did not give in evidence that the claim against said estate of A. H. Robie had been presented to the probate court of Ada County, the residence of deceased, or to the said John Hailey, adm' on said estate, at any time since the decease of said Robie for allowance or rejection, approval or disapproval.

53 The counsel for the plaintiff here rested, and the counsel for the defendant moved the court to direct the jury to find a virdict for the defendant on the ground that the evidence did not show that the claim in suit had been presented to the administrator of said estate of A. H. Robie, deceased, for allowance or rejection as required by law, which said motion was in writing and as follows, to wit:

In the district court of the second judicial district of Idaho Territory in and for Ada County, sitting for the trial of causes arising under the Constitution and laws of the United States, Dec. term, A. D. 1881. Present, H. E. Prickett, Judge; The United States, plaintiff; John Hailey, adm. of the estate of A. H. Robie, deceased, defendant.

Now, this tenth day of Dec., A. D. 1881, being a day of said term, this action being on trial before the court and a jury, and the plaintiff having completed its evidence and rested, the defendant moves the court to direct the jury to find a virdict for the defendant on the ground that the evidence does not show that the claim in suit has been pre-
54 sented to the administrator of the said estate of A. H. Robie, deceased, for allowance or rejection as required by law."

HUSTON AND GRAY, AND
RICHARD Z. JOHNSON,
Atty's for Defendant.

The said motion was granted by the said court, and the counsel for the plaintiff then and there excepted to said ruling of said court. The said judge directed the jury to find for the defendant, and the said jury under said direction returned a virdict for the defendant in due form, to which counsel for the plaintiff also excepted.

On the twelfth day of December, 1881, in open court, the presiding justice, in accordance with the statute, granted the plaintiff thirty days in which to prepare exceptions and serve the same on the def't. And because none of said exceptions so offered and made to the opinion and decision of the said court, and to the virdict of said jury, do appear upon the record of said trial, therefore, upon prayer of the said plaintiff by its counsel, his honor, the presiding justice who presided at said trial
55 and made said decisions, hath settled these exceptions according to the statute in such case made and provided, this 28th day of January, A. D. 1882.

(Signed)

H. E. PRICKETT,
District Judge.

Due service of a copy of the within is hereby acknowledged this 6th day of January, 1882.

HUSTON AND GRAY,
Att'ys for Def't.

56 (Endorsed:) In the district court, second jud. dis. Idaho Territory, sitting for the trial of causes arising under the Constitution and laws of the U. S. United States vs. John Hailey, adm'r on estate of A. H. Robie. Exceptions proposed by plaintiff. Filed Feb. 6th, 1882. A. L. Richardson, clerk, by B. S. Prickett, deputy clerk.

57 *Notice of appeal.*

In the district court, 2nd judicial district of Idaho Territory, sitting for the trial of causes under the Constitution and laws of the United States, Dec. term, 1881, Ada County.

THE UNITED STATES, PLAINTIFF,
vs.
JOHN HAILEY, ADM'R ON ESTATE OF A. H. Robie, deceased.

To the clerk of the said 2nd judicial district court of Idaho Territory:

You are hereby notified that the plaintiff appeals from the ruling of the presiding judge on trial of said action in said court whereby said judge granted the motion of def't's counsel to direct the jury to find for the defendant on the ground that the plaintiff had not introduced evidence showing that the claim in suit had been presented to the administrator of said estate for his allowance or rejection as the law requires, said motion of said counsel being in writing and as follows, to wit:

58 In the district court of the second judicial district of Idaho Territory, in and for Ada County, sitting for the trial of causes arising under the Constitution and laws of the United States, Dec. term A. D. 1881. Present, H. E. Prickett, judge. The United States, plaintiff, John Hailey, adm'r of estate of A. H. Robie, deceased, defendant.

Now, this tenth day of Dec., A. D. 1881, being a day of said term, this action being on trial before the court and a jury, and the plaintiff having completed its evidence and rested, the defendant moved the court to direct the jury to find a verdict for the defendant on the ground that the evidence does not show that the claim in suit has been presented to the administrator of said estate of A. H. Robie for his allowance or rejection as required by law.

HUSTON AND GRAY AND
RICHARD F. JOHNSON,
Att'ys for Defendant.

Said motion being in the said tenth day of Dec., 1881, granted.

Plaintiff also appeals from the judgment of said court and virdict of said jury, because said jury was not instructed by said court correctly according to law, said appeals being taken by said plaintiff to the
59 supreme court of Idaho Territory.

W. R. WHITE,
U. S. Att'y for Idaho Territory, for the Plaintiff.

Dated at Boise City, Feb. 6th, 1882. .

(Endorsed:) In the district court, 2nd judicial dist., Ada County, I. T. United States vs. John Hailey, adm'r of estate of A. H. Robie. Notice of appeal. Filed Feb. 6th, 1882. A. L. Richardson, clerk, by B. S. Prickett, deputy clerk.

60 *Clerk's certificate.*

TERRITORY OF IDAHO,
County of Ada, ss:

I, A. L. Richardson, clerk of the district court of the second judicial district of Idaho Territory in and for Ada County, do hereby certify that the foregoing transcript of pages, from page 1 to 68 inclusive, contains a full, true copy of the complaint, summons, answer, notice of motion to strike out, and demurrer to answer in part, order substituting John Hailey, adm. for A. H. Robie, as defendant, order of court sustaining demurrer to answer in part and overruling motion to strike out demurrer to 6th sub. of answer, order sustaining demurrer to 6th sub. of answer, defendant's bill of exceptions, motion for virdict for defendant, virdict, judgment, certificate to judgment roll, order extending time for preparing & serving bill of exceptions, exceptions, notice of appeal, in the case of the United States vs. John Hailey, administrator of the estate of A. H. Robie, deceased, as the same appear of record and on file in my office.

Witness my hand and the seal of said court affixed this 26th day of August, A. D. 1882.

[SEAL.]

A. L. RICHARDSON,
Clerk,
By B. S. PRICKETT,
Deputy Clerk.

61 Journal entries.

In the supreme court of Idaho Territory, September term, A. D. 1882.

MONDAY, *September 4th*, 1882.

U. S. civil No. 2.

THE UNITED STATES, APPELLANT,
vs.
JOHN HAILEY, ADM'R OF THE ESTATE OF A. H. Robie, deceased, respondent.

Ordered, That this cause be set for hearing on Wednesday, the 6th inst., at 10 o'clock a. m.

WEDNESDAY, *Sept. 6th*, 1882.

U. S. civil No. 2.

THE UNITED STATES, PLAINTIFF AND APpellant,
vs.
JOHN HAILEY, ADMINISTRATOR OF THE ESTATE of A. H. Robie, deceased, defendant and respondent.

Now came Richard Z. Johnson, esqr., of counsel for respondent
62 herein, and suggesting a diminution of the record, moved the court that the respondent's separate bills of exceptions filed in the district court Nov. 23d, 1878, and Nov. 25th, 1878, be made a part of the record in this court. Motion sustained and so ordered. Thereupon said cause came regularly on to be heard, Wallace R. White, esqr., U. S. attorney, appearing as counsel for appellant, and Richard Z. Johnson, esqr., and Messrs. Huston and Gray for respondent. Hon. Norman Buck, associate justice, having been of counsel in the court below, took no part in the hearing of said cause.

Wallace R. White, esq., U. S. att'y, addressed the court on behalf of appellant, followed by Richard Z. Johnson, esqr., on behalf of respondent. Wallace R. White, esqr., U. S. att'y, then closed the argument on behalf of appellant, and said cause was submitted and taken under advisement by the court.

WEDNESDAY, *September 13th*, 1883.

THE UNITED STATES, PLAINTIFF AND APpellant,
vs.
JOHN HAILEY, ADMINISTRATOR OF THE ESTATE of A. H. Robie, deceased, defendant and repondent.

On appeal from the district court of the second judicial district in and for Ada County.

63 And now, at this day, this cause being called, and having been heretofore submitted and taken under advisement by the court and all and singular the law and premises being by the court here seen, heard,

understood, and fully considered, the opinion of the court herein is delivered by Ch. J. Morgan, to the effect that the judgment of the court below be affirmed.

Whereupon it is now considered, ordered, adjudged, and decreed by the court here that the judgment of the district court of the 2nd judiciary district in and for the county of Ada, in the above-entitled cause, &c., and the same is hereby affirmed.

To which decision the appellant, by its counsel, Wallace R. White, Esq'r, U. S. att'y, then and there excepted.

64 *Exceptions to decision of supreme court, Idaho T'y.*

In the supreme court of Idaho T'y, September term, A. D. 1882.

THE UNITED STATES, PLAINTIFF AND APPELLANT,
vs.
JOHN HAILEY, ADM'R ON ESTATE OF A. H. ROBIE, deceased, respondent.

This case came from the district court of the second judicial district of Idaho T'y, sitting for the trial of causes arising under the Constitution and laws of the United States, on appeal taken by the United States as plaintiff and appellant, from the judgment of said district court, at Dec. term, A. D. 1881.

The original complaint in the above action was filed in the office of the clerk of the second judicial district aforesaid, Jan. 24, 1877, made against Alfred H. Robie in his life-time as one of the bondsmen on bond of Virgil Silsby Eggleston, alleged defaulting paymaster in the Army of the U. S. A summons was duly issued from the office of said clerk,
65 founded on said complaint, and was duly served on the defendant, A. H. Robie, during his life-time. Answer was made to said complaint by Richard Z. Johnson, att'y for defendant Robie, and filed in the office of said clerk, Jan. 31, 1878.

Between the April and Nov. terms, 1878, defendant Robie died, and on the 13th day of Nov., 1878, at the term of said Nov. court, at the suggestion and motion of Norman Buck, U. S. att'y for Idaho T'y, and Richard Z. Johnson for defendant Robie, John Hailey, adm's on the estate of said A. H. Robie, deceased, was substituted for said Robie. On the 20th day of Nov., 1878, a demurrer to the seventh subdivision of defendant's answer was made in said court, and on the 21st day of Nov., 1878, said demurrer was by said court sustained.

On the twenty-third day of Nov., 1878, a demurrer to the 6th subdivision was made by the U. S. att'y and sustained.

On the tenth day of December, A. D. 1881, being a day of said Dec. term, 1881, at the district court of the second judicial district of Idaho
66 T'y aforesaid, sitting for the trial of causes arising under the Constitution and laws of the U. S., in Ada County and Boise City, came the parties aforesaid, the United States by their att'y, W. R. White, U. S. att'y within and for Idaho T'y, and John Hailey, adm'r on said estate of A. H. Robie, deceased, the def't Hailey being personally present with his counsel, Messrs. Huston & Gray and Richard Z. Johnson, before the said district court, and the jurors duly summoned to try said issue being called,

also came, who to seek the truth of the matter aforesaid were duly chosen, tried, and sworn.

And upon the trial of said issue the counsel for the plaintiff, in order to maintain the issue on the part of the plaintiff, gave in evidence the original bond signed by Virgil Silsby Eggleston, Albert H. Robie, and Alexander H. Miller, in favor of the U. S., dated July 10th, 1873, and the transcript of the accounts of said Eggleston from the Treasury Department at Washington, and also a copy of accounts current of said Eggleston, from Aug., 1873, until the dismissal of said Eggleston by the U. S. authorities, and certain other receipts, but did not give in evidence and prove that the claim against said estate of A. H. Robie had been presented to the
67 probate court of Ada County, the residence of the deceased, or to the said John Hailey, adm'r on said estate, at any time since the decease of said Robie, for allowance or rejection, approval or disapproval.

The counsel for the plaintiff here rested the plaintiff's case, and the counsel for the defendant moved the court to direct the jury to find a verdict for the defendant on the ground that the evidence did not show that the claim in suit had been presented to the administrator of said estate of A. H. Robie, deceased, for allowance or rejection as required by law, which said motion was in writing and as follows, to wit:

In the district court of the second judicial district of Idaho T'y in and for Ada County, sitting for the trial of causes arising under the Constitution and laws of the U. S., Dec. term, A. D. 1881. Present, H. E. Prickett, judge.

The United States, plaintiff; John Hailey, adm'r of the estate of A. H. Robie, deceased, defendant.

Now this tenth day of Dec., A. D. 1881, being a day of said term, this action being on trial before the court and a jury, and the plaintiff having completed its evidence and rested, the defendant moves the court
68 to direct the jury to find a verdict for the defendant, on the ground that the evidence does not show that the claim in suit has been presented to the administrator of said estate of A. H. Robie, deceased, for allowance or rejection as required by law.

HUSTON & GRAY, AND
RICHARD Z. JOHNSON,
Att'ys for Defendant.

The said motion was granted by the said court, and the counsel for the plaintiff then and there excepted to said ruling of said court.

The said judge directed the jury to find for the defendant and the said jury, under said direction, returned a verdict for the defendant in due form, to which the counsel for the plaintiff excepted.

On the twelfth day of December, 1881, in open court, the presiding judge, in accordance with the statute, granted the plaintiff thirty days in which to prepare exceptions and serve the same on the defendant.

On the 28th day of Jan., 1882, the presiding judge of the said district court settled the bill of exceptions and signed the same.

The United States appealed from the judgment of the said district court in due form and according to law.

69 At the September term of the said supreme court of Idaho T'y, on the seventh day of Sept., A. D. 1882, being a day of said supreme court. Present, H. E. Prickett and J. T. Morgan, a quorum of

said supreme court, and the United States as appellant, by W. R. White, U. S. att'y, and the defendant & respondent by Messrs. Richard Z. Johnson and Houston & Gray, his counsel and att'ys of record; the said appealed case was argued before said supreme court by W. R. White, U. S. att'y for Idaho Ty', on the part of the appellant, and R. Z. Johnson, att'y for the respondent.

On the 13th day of Sept., 1882, being a day of said court, the judgment of the court below was affirmed, on the ground that sec. 140 of the Probate Practice Act of the Revised Laws of Idaho T'y, 1874–'5, required that a claim in suit against a defendant who dies while such suit is pending shall be presented to such adm'r, for his allowance or rejection, and that no recovery shall be had in the action unless proof be made of the presentations required by law.

This statute the court held was binding on claims in favor of the United States, in the same manner as the claims of other parties.

To which decision and judgment the United States, by their
70 att'y, W. R. White, in open court duly excepted, and that the ruling of said court and other proceedings connected therewith may appear on record, this bill of exceptions is hereby settled, and allowed according to law by the said supreme court, this nineteenth day of Sept., 1882.

(S.) JOHN T. MORGAN,
Chief Justice of the Supreme Court,
Idaho Territory.

(Indorsed:)
Service of the within draft of bill of exceptions acknowledged, and we have no amendments to offer.

HUSTON & GRAY, AND
RICHARD Z. JOHNSON,
Att'y for def't.

In the supreme of Idaho T'y, Sept. term, 1882. United States, pl. & ap., vs. John Hailey, adm'r, defendant and respondent. Exceptions to decision of supreme court, Idaho T'y. Filed Dec. 16th, 1882. A. L. Richardson, clerk.

71 UNITED STATES OF AMERICA,
Territory of Idaho, ss:

I, A. L. Richardson, clerk of the supreme court of Idaho Territory, do hereby certify that the foregoing contains a true copy of the record and proceedings in the case of the United States, appellant, against John Hailey, administrator of the estate of A. H. Robie, deceased, respondent, lately decided in said court, and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Boise City, I. T., this 22d day of March, 1883.

[SEAL.] A. L. RICHARDSON, *Clerk.*

(Indorsement on cover:) No. 499. The United States, appellant, vs. John Hailey, administrator of A. H. Robie, deceased. Idaho Territory, supreme court. Filed 19th April, 1883.

SUPREME COURT, U.S.
FILED.
MAR 29 1886
JAMES H. McKENNEY,
CLERK.

118-233

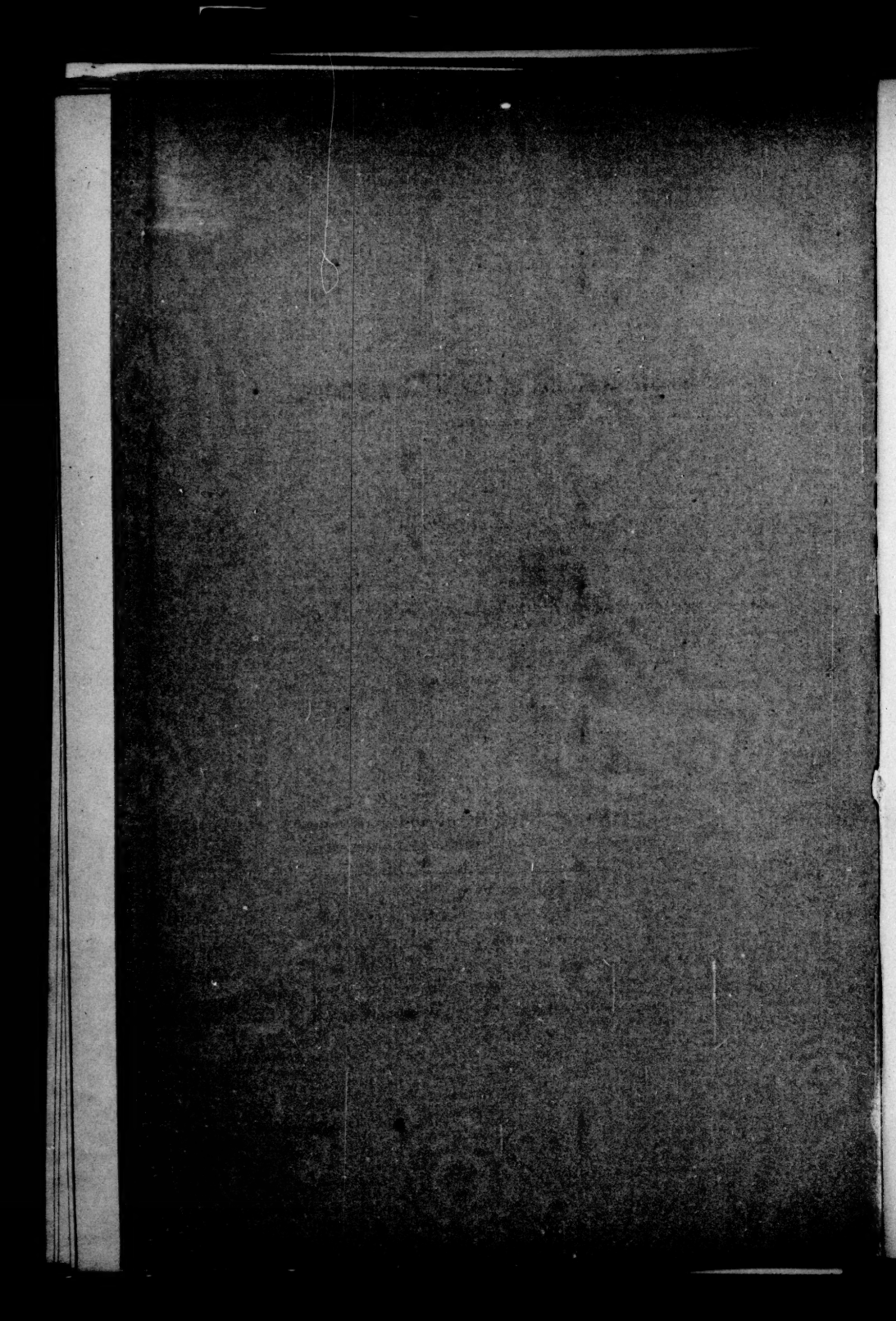
In the Supreme Court of the United States.

OCTOBER TERM, 1885.

THE UNITED STATES, APPELLANT,
vs.
JOHN HAILEY, ADMINISTRATOR OF A. H. Robie, deceased. } No. 219.

APPEAL FROM SUPREME COURT OF THE TERRITORY OF IDAHO.

BRIEF FOR THE UNITED STATES.



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Statement of the case.

This suit was originally brought in the district court of the second judicial district of Idaho Territory, sitting in Ada County, for the trial of causes arising under the Constitution and laws of the United States. The object of the suit was to recover from the defendant, Albert Hugh Robie, as one of the sureties of one Virgil Silsbey Eggleston, paymaster in the Army of the United States, the sum of $12,413.45, the same being public money of the United States which had come into the hands of the said Virgil Silsbey Eggleston, as such paymaster as aforesaid, and then and there remaining in his hands unaccounted for.

On the 13th of November, 1878, the death of the said A. H. Robie having been suggested, the said district court, on motion of the United States attorney and the attorney for the defendant, ordered that the name of John Hailey, administrator of the said A. H. Robie, deceased, be substituted as defendant in the said suit.

On the 10th day of December, 1881, the said suit came on for trial and the jury, under instructions of the court, found a verdict for the defendant. An appeal was taken from the judgment of the said district court to the supreme court of the Territory of Idaho, which affirmed the judgment of the said district court, and from the said judgment of the said supreme court this appeal has been taken to this court.

Assignments of error.

1st. The plaintiff assigns for error that the supreme court of the Territory of Idaho erred in affirming the judgment of the court below on the ground that section 140 of the probate practice act of the Revised Laws of Idaho Territory, 1874 and 1875, required that a claim in suit against a defendant who dies while such suit is pending shall be presented to such administrator for his allowance or rejection, and that no recovery shall be had in the action unless proof be made of the presentations required by law, and that this statute was binding on claims in favor of the United States in the same manner as the claims of other parties.

2d. That the supreme court of Idaho Territory erred in affirming the judgment of the said district court.

Argument.

In support of the assignments of error we submit the following propositions:

1st. The record shows that the district court of the second judicial district of Idaho Territory, in which this suit was instituted and tried, was sitting for the trial of causes arising under the Constitution and laws of the United States. In other words, at the time of the trial, it was sitting, not as a Territorial, but as a United States court. The section of the probate practice act of the Revised Laws of Idaho Territory, 1874 and 1875, relied upon by the court below, reads as follows:

> SEC. 140. If any action be pending against the testator or intestate at the time of his death, the plaintiff shall in like manner present his claim to the executor or administrator for allowance or rejection, authenticated as required in other cases; and no recovery shall be had in the action unless proof be made of the presentations required by law.

While this statute is binding upon the court sitting as a Territorial court, it was not binding upon the court sitting as a United States court for the trial of causes arising under the Constitution and laws of the United States. Section 1910 of the Revised Statutes reads as follows:

> Each of the district courts in the Territories mentioned in the preceding section shall have and exercise the same jurisdiction, in all causes arising under the Constitution and laws of the United States, as is vested in the circuit and district courts of the United States. * * *

Idaho is one of the "Territories mentioned in the preceding section," and when the district court of Idaho Territory heard and decided this suit, which arose under the Constitution and laws of the United States, it exercised the same jurisdiction as is vested in the district and circuit courts of the United States. For the purposes of that trial it was a court of the United States.

Section 955 of the Revised Statutes provides as follows:

> When either of the parties, whether plaintiff or petitioner or defendant, in any suit in any court of the United States dies before final judgment, the executor or administrator of such deceased party may, in case the cause of action survives by law, prosecute or defend any such suit to final judgment. The defendant shall answer accordingly; and the court shall hear and determine the cause and render judgment for or against the executor or administrator, as the case may require. And if such executor or administrator, having been duly served with a *scire facias* from the office of the clerk of the court where the suit is depending twenty days beforehand, neglects or refuses to become a party to the suit, the court may render judgment against the estate of the deceased party in the same manner as if the executor or administrator had voluntarily made himself a party. The executor or administrator who becomes a party as aforesaid shall, upon motion to the court, be entitled to a continuance of the suit until the next term of the said court.

We submit that this statute governed the case in the court below, and not the probate practice act of Idaho Territory. The Territory of Idaho can exercise no legislative power which is inconsistent with the Constitution and laws of the United States. (See section 1851, R. S.)

2d. If Idaho had been a State instead of a Territory at the time of the passage of the probate practice act in question, that act could not have applied to a suit brought in the name of a State against a public officer or his sureties. This is a principle of public policy intended to secure the rights and property of the public against loss or injury by the negligence of public officers and agents. And upon the same reason it is a settled doctrine that the general words of a statute do not include the State or affect her rights unless she be specially named, or it be clear and indisputable from the act that it was intended to include the State. (*Josselyn* vs. *Stone & Matthews*, 28 Miss. Reports, 763; *People* vs. *Gilbert*, 18 J. R., 228; *United States* vs. *Hoar*, 2d Mason Reports, 314; *Inhabitants of Stoughton* vs. *Baker*, 4 Mass. Reports, 528; *State of Maryland* vs. *Bank of Maryland*, 6 Gill & Johns., 205–226).

3d. Whatever might have been the operation of such a State law, so far as the State and individuals are concerned, it could not be held to operate against the United States in its own courts. In the case of Turner *vs.* The United States (19 Ct. Cls. Rep., 640), the Court of Claims said:

> It was not the intention of Congress, we think, to make an express provision in relation to a course of proceeding before the United States courts, and then allow each State to change it at pleasure. (See also Wear *vs.* The Mayor, 6 Fed. Rep., 660.)

4th. It is an invariable rule that statutes which derogate from the powers and prerogatives of the Government, or tend to diminish or restrain any of its rights and interests, do not apply to it unless it is expressly named. (U.

S. *vs.* Herron, 20 Wall., 251; Savings Bank *vs.* U. S., 19 Wall., 228, 229, and cases cited; Dwarris, p. 523; Sedgwick Stat. and Const. Laws, pp. 105, 395, ed. 1857.)

5th. If the defendant had the right to make the defense which he claims under the Idaho statute, he voluntarily waived it. The record, page 10, shows that on November 13, 1878, his own attorney appeared in open court, suggested the death of Albert H. Robie, the original defendant, and moved the court that the present defendant, as administrator, be substituted. It further shows that on the 10th day of December, 1881, before the said district court sitting for the trial of causes arising under the Constitution and laws of the United States, came the parties aforesaid, the United States by their attorney, W. R. White, United States attorney within and for Idaho Territory, and John Hailey, administrator on said estate of A. H. Robie, deceased, defendant, being personally present with his counsel, Messrs. Huston & Gray and Richard Z. Johnson, before the said district court sitting for the trial of causes under the Constitution and laws of the United States, and the jurors duly summoned to try said issue, being called also came, who to speak the truth of the matter aforesaid were duly chosen, tried, and sworn. This voluntary appearance at the trial by the defendant amounted, we submit, to a waiver of the benefit sought to be secured by section 140 of the probate practice act of Idaho Territory, upon which the court below based its judgment.

Very respectfully,

JOHN GOODE,
Solicitor-General.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1291.

THE UNITED STATES, APPELLANTS,

vs.

THE CENTRAL PACIFIC RAILROAD COMPANY.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 10, 1887.